

Before the
Tennessee Regulatory Authority
Nashville, Tennessee

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IN RE:

GENERIC DOCKET ADDRESSING
RURAL UNIVERSAL SERVICE

DOCKET NO. 00-00523

INITIAL RESPONSE OF THE RURAL INDEPENDENT COALITION
TO PLEADINGS ADDRESSING "RECONSIDERATION" OF
HEARING OFFICER'S ORDER DATED MAY 6, 2004

on behalf of

Ardmore Telephone Company, Inc.
Ben Lomand Rural Telephone Cooperative, Inc.
Bledsoe Telephone Cooperative
CenturyTel of Adainsville, Inc.
CenturyTel of Claiborne, Inc.
CenturyTel of Ooltewah-Collegedale, Inc.
Concord Telephone Exchange, Inc.
Crockett Telephone Company, Inc.
DeKalb Telephone Cooperative, Inc.
Highland Telephone Cooperative, Inc.
Humphreys County Telephone Company
Loretto Telephone Company, Inc.
Millington Telephone Company, Inc.
North Central Telephone Cooperative, Inc.
Peoples Telephone Company
Tellico Telephone Company, Inc.
Tennessee Telephone Company
Twin Lakes Telephone Cooperative Corporation
United Telephone Company
West Tennessee Telephone Company, Inc.
Yorkville Telephone Cooperative

"The Rural Independent Coalition of Small LECs and Cooperatives"

May 24, 2004

**Before the
Tennessee Regulatory Authority
Nashville, Tennessee**

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**GENERIC DOCKET ADDRESSING
RURAL UNIVERSAL SERVICE**

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INITIAL RESPONSE OF THE RURAL INDEPENDENT COALITION

The Rural Independent Coalition¹ (hereafter referred to as the ACoalition@) respectfully files this Initial Response to several filings by other parties in response to the Hearing Officer's Order dated May 6, 2004 (the "May 6 Order"). Specifically, the Coalition initially addresses the "Petition for Reconsideration" filed May 17, 2004, by the CMRS Providers (the "CMRS Petition"); the "Motion for Reconsideration of Hearing Officer's Order Dated May 6, 2004" (the "BellSouth Motion") filed by BellSouth Telecommunications, Inc. ("BellSouth"); and BellSouth's correspondence of May 20, 2004. The CMRS Petition and the Bellsouth Motion are collectively referred to as the "Motions for Review."²

¹ The Coalition membership is comprised of 21 Independent telephone companies and cooperatives which collectively provide approximately 335,000 access lines to customers who reside and work within the more rural areas of Tennessee

² The Coalition respectfully reserves its rights to respond fully and to be heard in accordance with its rights pursuant to the Tennessee Code in the event that either of the Motions for Review is granted. If either of the Motions for Review is treated as a Petition for Reconsideration of an Initial Order and reconsideration is granted, the Coalition will respond in accordance with schedule established by the Hearing Officer pursuant to T.C.A. 4-5-317 and Chapter 1220-1-2 20 of the Rules of the Tennessee Regulatory Authority. If either of the Motions for Review is treated as a Petition for Appeal by the full panel, the Coalition will subsequently respond fully in accordance with the schedule established by the TRA pursuant to T.C.A. Section 4-5-315(e)

I. The Coalition Respectfully Requests that the Motions for Review be Addressed in a Manner Consistent with the Applicable Provisions of the Tennessee Code, and not as proposed by BellSouth in its May 20, 2004, Correspondence to Chairman Tate.

Procedural confusion exists as the result of the BellSouth May 20, 2004, correspondence to Chairman Tate in which BellSouth “specifically requests that the Panel add this matter to the Agenda for Monday, May 24.” BellSouth asks that the TRA on May 24, 2004 “consider accepting and scheduling all of the requests for review by the Panel of the May 6 Order at the Authority Conference on Monday, May 24 and setting a schedule for briefing and argument on the merits at the next Conference.”

In its May 20, 2004, correspondence to the Chairman, BellSouth clarifies that irrespective of the fact it captioned its May 17, 2004 pleading as a “Motion for Reconsideration of Hearing Officer’s Order Dated May 6, 2004,” BellSouth actually intended that its pleading be treated as a petition for appeal of the initial order to the full panel pursuant to T.C.A. 4-5-315(b). BellSouth did not intend to seek reconsideration from the Hearing Officer.

The CMRS Providers, however, did apparently intend to seek reconsideration by the Hearing Officer pursuant to T.C.A. 4-5-317 and Chapter 1220-1-2.20 of the Rules of the Tennessee Regulatory Authority. The CMRS Providers entitled their pleading “CMRS Providers’ Petition for Reconsideration” and directed their filing to the Hearing Officer, Director Jones.³ Curiously, however, the BellSouth May 20, 2004, correspondence takes the liberty of suggesting that the pleading filed by the CMRS Providers should be treated as a request “for review by the Panel” together with its own request and pursuant to T.C.A. 4-5-315(b).

³ Although BellSouth’s use of the term “reconsideration” and caption of its May 17, 2004, pleading as a “Motion” did cause confusion, it is clear from the outset that BellSouth sought review by the entire Panel as BellSouth clarified in its May 20, 2004, correspondence referencing T.C.A. 4-5-315(b). To the contrary, however, the CMRS Providers properly captioned their pleading as a Petition for Reconsideration and submitted it directly to the Hearing Officer

The filing of the Petition for Reconsideration by the CMRS Providers has tolled the period for the filing of a petition for appeal pursuant to Tennessee Code Section 4-5-315(b). The Coalition respectfully suggests that the "CMRS Providers' Petition for Reconsideration" must first be disposed of before the TRA proceeds to address the petition for appeal already filed by BellSouth, or any other petition for appeal that may be subsequently filed by any other party on a timely basis following disposition of the "CMRS Providers' Petition for Reconsideration." BellSouth's May 20, 2004, correspondence cannot factually or legally transform the CMRS Providers' pleading into a petition for appeal by the full panel.

The Coalition respectfully suggests that subsequent to the disposition of the CMRS Providers' Petition for Reconsideration and the provision of the statutory period required for the filing of a petition for appeal by any party, the TRA should thereafter establish a schedule for further proceedings to address the BellSouth petition for appeal together with petitions filed by any other party.

II. The Coalition Respectfully Requests that the Hearing Officer Deny the CMRS Providers' Petition For Reconsideration.⁴

The CMRS Providers' Petition for Reconsideration should be denied. The CMRS Providers have not and cannot demonstrate any basis in fact or law that requires reconsideration.

The CMRS Providers ask for reconsideration based on a flawed argument, wrongly claiming that the May 6 Order conflicts with federal regulations regarding "interim compensation."

The Coalition has fully addressed this claim on the record in this proceeding. In their Petition for Reconsideration the CMRS Providers fail even to attempt to rebut the discussion previously offered by the Coalition. In fact, the CMRS Providers cannot rebut either the Coalition's discussion or the plain meaning of the Rules and Regulations of the Federal Communications Commission ("FCC") which they incorrectly interpret.

The Coalition stated the following in the Reply Brief filed March 8, 2004 in this proceeding⁵:

The concept of "interim compensation" is found only in Section 51.715 of the FCC's Rules and Regulations.⁶ The Coalition is not aware of any instance where a carrier seeking new terms and conditions for an existing indirect interconnection arrangement has established interim compensation pursuant to these rules. The Section 51.715 rules, in fact, do not apply "when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of telecommunications traffic by the incumbent LEC."⁷ The rules

4 If the Hearing Officer grants the CMRS Providers' Petition for Reconsideration, the Coalition reserves its rights to respond fully in accordance with the schedule for additional proceedings established pursuant to T.C.A. 4-5-317(d). The Coalition respectfully utilizes this opportunity consistent with Chapter 1220-1-2-.06(2) of the Authority's Rules of Procedure to provide this initial response. Because BellSouth has clarified that its pleading should be treated as a petition for appeal to the full panel pursuant to T.C.A. 4-5-315(b), the Coalition reserves its right to respond to the BellSouth petition for appeal in accordance with the subsequent schedule BellSouth has asked the TRA to establish which would be in accordance with T.C.A. 4-5-315(e)

5 See, "Reply Brief of the Rural Coalition," March 8, 2004, p. 19.

6 47 C.F.R. Sec. 51.715

7 47 CFR Sec. 51.715(a)(1).

address circumstances where a carrier does not have any interconnection and it seeks to establish transport and termination on an incumbent LEC network. The interim arrangement rules established by Section 51.715 assure a requesting carrier that it does not have to wait to interconnect its traffic “pending resolution of negotiation or arbitration regarding transport and termination rates by a state commission under sections 251 and 252 of the Act.”⁸

Under the given circumstances, the CMRS carriers do not require an interim arrangement to ensure that they can terminate traffic to each rural Independent through BellSouth; an arrangement already exists. The Section 51.715 rules are not needed to establish interconnection, and the indirect interconnection arrangement under consideration is already used. Accordingly, the Section 51.715 rules are not applicable.

The CMRS Providers not only ignore the facts and law set forth above, but they also ignore provisions of the May 6 Order that address the concerns they raise. Specifically, the CMRS Providers complain that the May 6 Order “disregards the (alleged) compensation due the CMRS Provider” and argues that the “adopted rates are not subject to true up.”⁹ The CMRS Providers demand that the May 6 Order be “modified to state that all payments made will be subject to the terms adopted in Docket No. 03-00585.”¹⁰

The Hearing Officer, however, has already addressed these arguments raised by the CMRS Providers. The May 6 Order correctly notes that “This dispute arose out of the Interconnection Arrangements between BellSouth and the Coalition. Therefore, the Hearing Officer’s resolution involves only those parties.”¹¹ The dispute before the Hearing Officer addresses the existing terms and conditions referred to by the Hearing Officer as the

8 47 CFR Sec 51.715(a) The rules also contemplate that the requesting carrier seeks transport “from the interconnection point between the two carriers to the terminating carrier’s end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.” 47 CFR Sec 51.701(c). The negotiation discussions between the Coalition representatives and the CMRS carriers focused only on the development of new terms and conditions applicable to the existing interconnection arrangement, and not to the establishment of any specific point of interconnection between any rural Independent with any CMRS carrier.

9 CMRS Providers’ Petition for Reconsideration, p. 5

10 *Id.*, p. 8.

Interconnection Arrangements. The arbitration in Docket No. 03-00585 addresses the unresolved issues in the negotiation that was initiated to establish new terms and conditions to replace the Interconnection Arrangements with respect to traffic originated on the networks of the CMRS Providers and terminated by the Coalition members.

The Hearing Officer did not foreclose any rights of CMRS Providers which they may seek to establish in the Arbitration proceeding. The Hearing Officer specifically recognized the possibility that the CMRS Carriers and the Coalition could reach an interim agreement in Docket No. 03-00585, and provided for a mechanism for BellSouth to request relief from the May 6 Order under those circumstances.¹² Moreover, the Hearing Officer recognized that the issue of “Who bears the legal obligation to compensate the terminating carrier for traffic that is exchanged indirectly between a CMRS provider and an ICO” is an open issue in the Docket No. 03-00585 arbitration.¹³ The May 6 Order does not pre-judge any issues or rights of any party that are properly raised in the arbitration proceeding. The May 6 Order addresses exclusively the rights and obligations that exist between BellSouth and the Coalition members, the parties to the dispute in this proceeding.

The CMRS Providers are incorrect in their arguments regarding the application of the interim compensation rules established by the FCC. Even if they were correct – and they are not – the May 6 Order does not preclude the CMRS Providers from asserting and establishing any rights to which they are entitled pursuant to established standards and regulation within the context of the Docket No. 03-00585 arbitration proceeding. The CMRS Providers’ Petition for Reconsideration fails to raise any arguable matter of fact or law that warrants reconsideration.

11 May 6 Order, p. 17.

12 *Id*

13 *Id*

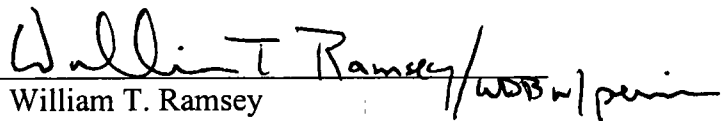
CONCLUSION

The statutory time for filing an appeal of the May 6 Order to the full panel has been tolled pursuant to T.C.A. 4-5-315(b) by the filing of the CMRS Providers' Petition for Reconsideration.

The BellSouth May 20, 2004, correspondence to Chairman Tate did not transform the CMRS Providers' Petition for Reconsideration into a Petition for Appeal to the full panel. For the reasons stated above, the CMRS Providers' Petition for Reconsideration should be denied. Subsequent to the disposition of the CMRS Providers' Petition for Reconsideration, the Authority should establish a schedule to address the BellSouth "Motion for Reconsideration" which BellSouth has clarified to be a petition for appeal of the May Order to the full panel pursuant to T.C.A. 4-5-315(b).

Respectfully submitted,

The Tennessee Rural Independent Coalition

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on May 24, 2004, a true and correct copy of the foregoing was served on the parties of record, via the method indicated below:

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